In the High Court of Punjab and Haryana, Chandigarh.

Income Tax Reference No. 70 of 1990

Date of Decision: 17.08.2007

The Commissioner of Income-tax, Patiala

…Applicant

Versus

M/s Rieta Biscuits Co. (P) Ltd., Patiala

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Yogesh Putney, Advocate
for the applicant/revenue.

Mr. Akshay Bhan,Advocate
for the respondent/assessee.

RAJESH BINDAL, J.

In this reference, the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short "the Tribunal") vide its order dated 11.7.1988 arising out of ITA No. 502/Chandi/87 has referred the following question of law under Section 256(1) of the Income Tax Act, 1961 (for short "the Act) for the assessment year 1982-83 for opinion of this Court:-

> "Whether, on the facts and in the circumstances of the case, the ITAT was right in law in holding that the proceedings once filed under the provisions of Section 263, on an issue, fresh proceedings u/s 263 cannot be

initiated, within the time limit allowed under the law, even if the later proceedings are initiated on a different issue?"

2. Briefly noticed, the facts are that vide order dated 2.6.1984 passed under Section 143(3) of the Act, the assessment was completed at nil income. Vide agreement dated 31.8.1977, the assessee-company leased out its land, building and plant and machinery to M/s Bakemans Home Products, a partnership firm and while framing assessment, the lease income of the assessee-company was wrongly assessed as business income. Accordingly, the investment allowance of Rs. 7,23,723/-, other expenses amounting to Rs. 50,111/- and extra shift allowance on plant and machinery amounting to Rs. 1,15,865/- were wrongly allowed by the IAC (Asstt.). As the above deductions were not admissible against the lease income, proceedings under Section 263 of the Act were initiated by the Commissioner of Income-tax (for short "the CIT"). In March 1986, notice was issued to the assessee for the assessment year 1982-83 to show cause as to why assessment order be not modified by passing suitable remedial orders. The proceedings initiated were subsequently filed. The CIT vide order dated 25.3.1987 re-initiated proceedings under the provisions of Section 263 of the act and directed the IAC (Asstt.), Patiala to frame a fresh assessment according to law after affording proper opportunity of hearing to the assessee. Being aggrieved, the assessee filed the appeal before the Tribunal who vide order dated 11.7.1988 accepted the appeal and set aside the order of the CIT holding it to be without jurisdiction.

3. A perusal of order of the Tribunal shows that there is finding of fact that earlier proceedings initiated under Section 263 of the Act and the proceedings initiated subsequently were not on different issues as the same relate to only one issue. The perversity of these findings is not an issue in the present case.

4. While deciding ITR No. 35 of 1991 (The Commissioner of Income-Tax, Patiala v. M/s Rieta Biscuits Co. Pvt. Ltd., Patiala) arising out of orders passed by the Tribunal for the assessment year 1983-84 on the issue of entitlement to deductions under Section 32A of the Act, the issue was decided in favour of the assessee and against the revenue.

5. Keeping in view the principles of consistency once the issue on merits has been decided against the revenue on the same issue during the

subsequent assessment years, we do not deem it appropriate to take a different view on a technical reason. Accordingly, without specifically opining on the issue on merits, the reference is decided against revenue.

6. Reference is disposed of accordingly.

(Rajesh Bindal)
Judge

(M.M.Kumar)
Judge

August 17, 2007
"DK"